

Waivers	First Name	Last Name	Claim Number
			W-14-0003
Amount	OGC Received Date	Assigned To	Assigned Date
\$702.56	03/27/2014	Richard Feldman	03/27/2014
EPA Decision	EPA Decision Date	Amount Approved	Status
DENIED	05/06/2014	CLOSED	
Appeal	Comments		
No			

This email is in response to your Waiver/Remission of Indebtedness Application dated March 26, 2014, wherein you request approval of a waiver for the gross amount of \$778.96. The net amount of the debt is \$702.55. For the reason set forth herein, your waiver request is denied.

Briefly stated, you were granted a step increase in May 2012 from GS 13 step 5 to GS 13 step 6. However, the record indicates that for the performance period ending in November 2011, your performance was rated unacceptable; in March 2012 your performance was again rated unacceptable. Despite these performance ratings, you were granted a step increase to GS 13 step 6. By letter dated October 31, 2012, and received by you on November 5, 2012, the Agency informed you that the within-grade-increase (WGI) "erroneously processed...should be retroactively corrected." As a result of this correction, a debt was created.

Section 5584 of Title 5 of the United States Code provides authority to waive claims for erroneous payments of pay and certain allowances made to federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid. B-271308, April 18, 1996. An employee who has knowledge of a pay error or who should have been aware of a pay error is deemed to be at fault. In this regard, the case law indicates that an employee who knows or suspects that he/she has received an overpayment should be prepared to return any overpayment he/she has received, because it is not against equity or good conscience to collect an overpayment from the employee. Hawley E. Thomas, B-227322, Sept. 19, 1988; Richard W. DeWeil, B-223508, Dec. 24, 1986.

The letter to you from the Defense Finance and Accounting Service dated December 15, 2012, indicates that the pay periods ending May 19, 2012 through October 6, 2012, are the pay periods for which you were overpaid at a GS 13 step 6. The record available to me demonstrates that

these were the affected pay periods. In early November 2012, you received an EPA letter advising you that you had received an “overall summary rating of unacceptable” in November 2011 and the same rating in March 2012, “after your PIP [Performance Improvement Plan].” Nevertheless, due to an error, a step increase was granted and your pay increased as a result.

One of the criteria that must be met for an employee to receive a within grade step increase is:

§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart. To be determined at an acceptable level of competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at least Level 3 (“Fully Successful” or equivalent).

5 C.F.R. 531.404(a).

In determining whether an employee’s actions are reasonable with regard to an overpayment, I examine such matters as the employee’s position, knowledge, experience and length of service. B- 222383, October 10, 1986. As an employee at the GS 13 level, I believe you knew and certainly should have known that in order to receive a so-called “automatic” step increase within a grade, an employee must receive a “fully successful” rating for his/her most recent rating period. That was not the case in your situation. Therefore, after your PIP, during April 2012 or at the very latest by November 2012, upon receipt of the Agency’s October 2012 letter, you knew or should have been aware that the step 6 increase was erroneous. As a result, your waiver request is denied.

I trust this email is responsive to your claim and I regret a more favorable reply cannot be made. Under 40 C.F.R. part 13.11(e)(iii), I have the delegated authority to waive all or part of the interest, penalty, and administrative charges which have accrued on this debt. In this regard, I am directing that EPA to waive any portion that will be collected attributable to interest, penalty, and administrative charges.

By copy of this email to Leonice Stewart at EPA, I am asking that the

collection of this debt proceed consistent with this email.

Richard Feldman  
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Office of General Counsel  
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Type  
Within Grade Increase (WIGI)

Attachments